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27210 7590 11/12/2008 MACMILLAN, SOBANSKI & TODD, LLC ONE MARITIME PLAZA - FIFTH FLOOR 720 WATER STREET TOLEDO, OH 43604				
EXAMINER				
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/504,000
Filing Date: February 14, 2000
Appellant(s): PARENT ET AL.

James A. Duggan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/22/08 appealing from the Office action mailed 12/13/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

WO 99/06934 to Pisula et al. (the Pisula reference)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 and 2 are unpatentable under 35 USC 102(a) over WO 99/06934 to Pisula et al.
(the Pisula reference)

(10) Response to Argument

A. Independent claim 1 ground of rejection

Argument: The Pisula reference does not disclose a reporting and analysis module configured to generate a report having a composite output as specifically recited in Claim 1. (pp.4 - 6).

Response: The examiner points out that whereas claim 1 is directed to modeling a simulated fleet, there is no reference to modeling a simulated fleet in the claim limitations. Rather, the claim is directed to an electronic system having structural components which do not functionally distinguish between "simulated fleet" and a real world fleet. The examiner therefore interprets the claimed invention as a system that allows a user to allow one or more assets regardless of whether the assets are real or simulated.

The determination of whether preamble recitations are structural limitations or mere statements of purpose or use "can be resolved only on review of the entirety of the [record] to gain an understanding of what the inventors actually invented and intended to encompass by the claim." *Corning Glass Works*, 868 F.2d at 1257, 9 USPQ2d at 1966. If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999).

In claim 1, the preamble recites "an electronic system for modeling a simulated fleet". However, no limitation of claim 1 sets forth (1) distinction between assets of a real fleet versus that of a simulated fleet, explicitly or otherwise and (2) the functionality of the structure of the claimed invention which comprises a simulated fleet figuration unit, a reporting and analysis module and a communications interface in terms of whether the asset is real or simulated.

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For example, Pisula provides for capability of allowing a user to add one or more assets to a fleet of assets electronically, each asset having a parameter associated therewith (see pool management module 112 in Figure 5 described at p. 2 15-19, p. 7 L 4-5, each equipment has an associated equipment initial and a number).

Pisula teaches a reporting and analysis module configured to generate a report having a composite output that corresponds to said parameter and is characteristic of all of said assets in said simulated fleet (refer to p. 7 L 1-7, UMLER module 116, a user can obtain specification for equipment of a fleet of equipment or assets by specifying associated parameters, it is noted that the specification generated for a pool or fleet listing that corresponds to the specific parameter of each of the asset in the fleet)

Pisula teaches a communications interface configured to facilitate electronic remote access of said system by the user (refer to p. 2 L 12-14, "accessing freight transport network information over the internet" and p. 4 L 15-20 referring to the "internet access".)

The appellant argues at p. 5 that it is clear from the teachings of specification described on p. 4 and 5 of the appeal brief that the reporting and analyzing module arithmetically manipulates the simulated fleet data and outputs this manipulated data in the report generated by the electronic system and that the composite output is the result of a summation or other mathematical manipulation that is not taught or suggested in the Pisula reference.

The examiner agrees with the appellant that Pisula does not teach the output as being a result of a summation or other mathematical manipulation. However, the examiner notes that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, the specific teaching of the specification is not read into the claim.

With reference to limitation "reporting and analysis module" is treated as performing the recited function which is that the module generates a report having a composite output that corresponds to said parameter and is characteristics of all assets in said simulated fleet. There is no recitation, even implicitly, of any type of mathematical manipulation, being performed by the reporting and analysis module as claimed. Although the claimed invention labels the structural limitation as "reporting and analysis module", the examiner respectively points out it not the label of the structural component, but the function or act performed it is considered for patentability.

Argument: Claim 1 also requires "a simulated fleet configuration unit configured to allow a user to add one or more assets to said simulated fleet." The Pisula reference does not show any simulated fleets and does not provide a system to change one.

Argument: Pisula relies on real data from real assets and the electronic data interchange reports are not comprised of "fantasy fleet" data (p. 8, second paragraph) and distinction between real and simulated fleets is functional distinction (p. 9 third paragraph).

Response: As pointed out by the examiner earlier, the "a simulated fleet configuration unit" is treated with respect to its functionality and not the label itself. Therefore, the examiner interprets treats this element only in terms of the functionality and not what it is labeled. The fact that Pisula does not show any simulated fleet per se and does not provide a system to change one is not relevant. The question to be addressed is whether Pisula system teaches (i) a system having capability to allow a user to add one or more assets to a simulated fleet (which by the appellant's own admission contains any assets held or controlled by the user, see p.8, bottom paragraph) and (ii) in any of user's fleet..., new and used assets). The examiner therefore respectfully points out that the broad interpretation that the claimed invention fails to distinguish between the real fleet of assets and simulated (or fantasy) fleet of assets both structurally and functionally is proper.

Therefore, the examiner respectfully, asserts that the claimed electronic system with its constituent structural component is disclosed by Pisula and that the 102(a) rejection of claim 1 as being anticipated by Pisula is proper.

B. Independent claim 22 ground of rejection.

The examiner withdraws rejection of claim 22 rendering claim 22 allowable.

Unlike in claim 1 system for modeling a simulated fleet, claim 22 explicitly recites that the simulated fleet comprises both pre-existing fleet assets and simulated assets. The examiner interprets the simulated assets as distinct from the pre-existing assets in that the simulated assets are associated realistic but not real data. Pisula or any other prior art fails to teach, suggest or render obvious an electronic system having a simulated fleet configuration unit which is configured to allow a user to add one or more simulated asset to a simulated fleet which comprises a combination of pre-existing assets and simulated assets.

I C. Dependent claim 2 ground of rejection

For limitation of the independent claim 1 please refer to section A.

Claim 2 recites that the simulated fleet configuration unit as further comprising at least one of a fleet builder module, including a step-by-step asset entry system; a fleet search module including a first add-to-fleet feature; a simulated fleet module including an add-asset feature, and a market search module including a second add-to-fleet feature. (Please refer to (Fig. 5, p. 6, L 15+)).

The appellant's assertion that the simulated fleet configuration unit is associated only with fantasy or simulated fleet has been responded to in responses to the appellant's arguments of claim 1.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/JAGDISH N PATEL/
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